

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**G & L ASSOCIATED, INC.,
d/b/a USA FIRE PROTECTION,**

Respondent,

NLRB Case No. 10-CA-38074

and

**ROAD SPRINKLER FITTERS LOCAL
UNION NO. 669, U.A., AFL-CIO,**

Charging Party.

AUSTIN FIRE EQUIPMENT, LLC,

Respondent,

NLRB Case No. 15-CA-19697

and

**ROAD SPRINKLER FITTERS LOCAL
UNION NO. 669, U.A., AFL-CIO,**

Charging Party.

**KING'S FIRE PROTECTION, INC. and its
alter ego WARRIOR SPRINKLER, LLC,**

Respondents,

NLRB Case Nos. 5-CA-36094, *et al.*

and

**ROAD SPRINKLER FITTERS LOCAL
UNION NO. 669, U.A., AFL-CIO,**

Charging Party.

**REPLY BY CHARGING PARTY TO THE OPPOSITION BY AUSTIN FIRE TO
CONSOLIDATION OF THESE CASES FOR FURTHER CONSIDERATION**

Charging Party Road Sprinkler Fitters Local 669, U.A., AFL-CIO (“Local 669” or “the Union”) respectfully submits this reply to the opposition by Respondent Austin Fire Equipment LLC (“Austin Fire”) to the Union’s original and updated motions. The Union’s motion requests

that the three cases cited above, currently pending before the Board for *de novo* decisions, be consolidated and considered together, following further briefing by the parties, on the important issues of construction industry labor law the cases present in common. Austin Fire's opposition does not provide any legitimate basis for denial of the Union's motion.

1. With regard to the procedural issues raised by Austin Fire, and contrary to its erroneous contention (Austin Fire Opp. at 6), consolidation of these cases is a matter for the Board, not the General Counsel, to determine. *Connecticut Light & Power Co.*, 222 NLRB 1243, 1243 (1976). The Board can, in its discretion, consolidate these cases where, as here, the cases present common issues of law under Sections 9(a) and 10(b) and would thereby enhance administrative efficiency. *Id.*

Moreover, this is not the typical situation where a party has asked the Board to reconsider and overturn a recent decision based on "extraordinary" circumstances. Austin Fire Opp. at 1. There are no extant decisions here for the Board to reconsider; all three decisions have been vacated by the Supreme Court's decision in *Noel Canning* and are pending before the Board for *de novo* consideration.

2. As substantive grounds for opposing the Union's motion, Austin Fire has claimed that these cases present "separate and unique questions of law and fact" (Austin Fire Opp. at 1), but has failed to identify what such "unique" questions might be. Austin Fire has not and cannot dispute that, in all three pending cases, the Respondent voluntarily and unconditionally recognized the Union, expressly pursuant to NLRA Section 9(a), and then attempted to repudiate that Section 9(a) recognition of the Union -- years after the fact -- as a defense to an NLRA

Section 8(a)(5) Complaint. Nor is the language in the Section 9(a) recognition agreements in dispute or, in the Union's view, substantively distinguishable.¹

Accordingly, these three cases do present the same issues: (i) whether the Respondents' voluntary, unconditional and explicit Section 9(a) recognitions of the same construction industry union, are sufficient to “conclusively notif[y] the parties that a 9(a) relationship is intended,” and thereby establish a binding Section 9(a) recognition;² and if so (ii) whether those Section 9(a) recognitions can be retroactively repudiated by these construction industry employers, after years of union recognition and continuous bargaining between the parties, notwithstanding the prohibition against untimely challenges to voluntary Section 9(a) recognition in NLRA Section 10(b) that the Board and the Courts have recognized and applied for over fifty (50) years.³

The Charging Party simply asks the Board to solicit briefs from all of the parties addressing the important issues of contract interpretation and construction industry labor law

¹ *King's Fire Protection, Inc.*, 358 NLRB No. 156 (2012), slip op. at 4, n.3; *G&L Associated, Inc. d/b/a USA Fire Protection*, 358 NLRB No. 162 (2012), slip op. at 1, *reconsideration denied*, 359 NLRB No. 59 (2013); *Austin Fire Equipment, LLC*, 359 NLRB No. 3 (2012), slip op. at 1, *reconsideration denied* 359 NLRB No. 60 (2013).

² *Madison Industries, Inc.*, 349 NLRB 1306, 1308 (2007) (citations omitted); *Staunton Fuel and Material (Central Illinois)*, 335 NLRB 717,720 (2001) (“... although it would not be necessary for a contract provision to refer explicitly to Sec. 9(a) ... such a reference would indicate that the parties intended a majority rather than an 8(f) relationship.”)

³ *Triple A Fire Protection*, 312 NLRB 1088, 1088 (1993), *enf'd* 136 F.3d 727 (11th Cir. 1998), *cert. denied* 525 U.S. 1067 (1999); *MFP Fire Protection*, 318 NLRB 840, 842 (1995), *enf'd* 101 F.3d 1341 (10th Cir. 1996); *American Automatic Sprinkler Systems, Inc.*, 323 NLRB 920, 920 (1997), *enf'ment denied in part*, 163 F.3d 209 (4th Cir. 1998), *cert. denied* 528 U.S. 821 (1999); *Dominion Sprinkler Services, Inc.*, 319 NLRB 624, 634 (1995). *See also Reichenbach Ceiling & Partition Co.*, 337 NLRB 125, 125 (2001) (Chairman Hurtgen concurring: “[a] contrary view would mean that stable relationships, assertedly based on Section 9(a), would be vulnerable to attack based on stale evidence. That is not permitted with respect to unions in nonconstruction industries.”) (citations omitted); *John Deklewa & Sons*, 282 NLRB 1375, 1387 n.53 (1987), *enf'd* 843 F.2d 770 (3rd Cir.), *cert. denied* 488 U.S. 889 (1988); *Local Lodge 1424 v. NLRB (Bryan Mfg.)*, 362 U.S. 411, 419 (1960).

these cases present in common. These are legal issues as to which there is considerable disagreement among current Board members.⁴ Further briefing will likewise allow the General Counsel, who has not opposed the Union's motion, to explicate his legal position on these important issues, a position that -- at least as of the time of the earlier decisions in these cases -- was the same as that advanced by the Charging Party herein.⁵

Austin Fire has not identified any prejudice which would befall it or any party from consolidation and further briefing of these cases. Given the substantial and unfortunate delay that has already occurred, we submit that there can be none. Accordingly, for the reasons stated above and previously, the Board should consolidate these cases, consider them together, and request further briefing by the parties on their merits.

Dated: October 6, 2014

Respectfully submitted,
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⁴ Compare *Austin Fire Equipment LLC*, 360 NLRB No. 131 (2014) (decision denying EAJA application, *vacated* under *Noel Canning*) (slip op. at 3, n.12 (decision of Chairman Pearce and Member Shiffler), and at 4-5, (Member Miscimarra dissenting)).

⁵ See *USA Fire Protection*, G.C. Br. (March 4, 2010) at 3-4; *King's Fire Protection*, Acting G.C. Br. (July 5, 2011) at 8-9; *Austin Fire Equipment*, Acting G.C. Br. (August 4, 2011) at 34-35.

Certificate of Service

I hereby certify that on October 6, 2014, I electronically filed Local 669's Reply to Austin Fire's Opposition to Motion for Consolidation and Reconsideration with the Executive Secretary of the National Labor Relations Board via the e-filing portal on the NLRB's website, and also forwarded a copy by electronic mail to the Parties as listed below:

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